



**STATE OF NEW MEXICO
WATER QUALITY CONTROL COMMISSION**

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Constituent Agencies

Environment Department
Office of State Engineer
Game and Fish Department
Oil Conservation Division
Department of Agriculture
State Parks Division
Soil and Water Conservation Commission
Bureau of Geology and Mineral Resources
Municipal/County Representative
Members -at Large

Approved 4/8/03

**Minutes of the
New Mexico Water Quality
Control Commission Meeting
December 16-17, 2002**

The New Mexico Water Quality Control Commission (WQCC) meeting was held on December 16, 2002, at the New Mexico Department of Education Building in Santa Fe, New Mexico.

MEMBERS PRESENT:

John D'Antonio	Chairman, New Mexico Environment Department
Doug Murray	Office of State Engineer
Julie Maitland	Department of Agriculture
Howard Hutchinson	Soil and Water Conservation Commission
Steve Glass	City of Albuquerque - Municipal/County Representative
Lynn Brandvold	Bureau of Geology and Mineral Resources
Conrad Keyes	Member-at-Large
Irene Lee	Member-at-Large
Charles M. Easterling	Member-at-Large
Mike Sloane	Department of Game and Fish
Bill Olson	Oil Conservation Division
David Johnson	State Parks Division

OTHERS PRESENT:

Zack Schandler, WQCC Counsel	Jolene L. McCaleb
Geraldine Madrid-Chavez, WQCC Administrator	Marcy Leavitt
Glenn Saums	Charles Nylander
Phil Wardwell	Chris Mechels
Leon Eggleston	Mike Saladen
Dal Moellenberg	Joyce Sheaner

John Montgomery
Joni Arends
William Maxwell
Kelly Bitner
Gene Turner
Ralph Ford-Schmid

Barbara Kilay
Louis Rose
Stephanie Stringer
Elaine Cimino
Lynette Stevens

Chairman D'Antonio called the meeting of the WQCC to order at 9:08 am.

Item #1: Roll Call

Geraldine Madrid-Chavez, WQCC Administrator, took roll and noted a quorum was present.

Item #2: Approval of the Agenda

The following changes were made:

- Table of Items #6, 7 & 8 until 12/17/02.

ACTION: **Commissioner Olson made a motion to table Items 6, 7 & 8 until 12/17/02. Commissioner Keyes seconded. Motion carried unanimously.**

ACTION: **Commissioner Brandvold made a motion to approve the agenda as amended. Commissioner Johnson seconded. Motions carried unanimously.**

Item #3: Approval of Taos County Club Casitas Order

The following changes were made:

- Page 1, Item 1, strike "plan" and replace it with "permit".
- Item #9 - Commission Chair was not Pete Maggoire for the October 1st hearing.
- Commission Chair D'Antonio was hearing officer.
- Page, 2 Item 2, last line from bottom – replace the word "and" with the word "or".

ACTION: **Commissioner Olson made a motion to approve the Taos Country Club Casitas Order as amended. Commissioner Keyes seconded. Motion carried unanimously.**

Item #4: Vacate Hearing for Arroyo Park an Open Space Community. (WQCC 02-16A)

Mr. Shandler informed the Commission that Arroyo Park has submitted a request for an informal hearing, which will allow the parties to try work things out on their own. Therefore, this hearing should be vacated.

ACTION: Commissioner Hutchinson made a motion to vacate the hearing for Arroyo Park an Open Space Community. Commissioner Brandvold seconded. Motion carried unanimously.

Item #5: Appeal Petition and Request for Hearing by Casey Luna Ford-Mercury, Inc, Regarding Facility No. 79001/Sid No. 1608. (WQCC 02-08P)

Mr. Paul Ritzma requested that a hearing be set in the matter of Appeal Petition by Casey Luna Ford-Mercury, Inc., regarding facility No. 79001/Sid No. 1608.

ACTION: Commissioner Maitland made a motion that Commissioner Hutchinson sit as hearing officer in the matter of Appeal Petition by Casey Luna Ford-Mercury, Inc. and that Commissioner Hutchinson be the one to set the date for hearing. Commissioner Sloane seconded. Motion carried unanimously.

Item #9: Consideration of Hearing Officers recommended decision and possible decision in the matter of the petition of the Department of Game and Fish for approval of the use of a piscicide in Animas Creek, Gila National Forest and Ladder Ranch, Sierra County, New Mexico. (WQCC 02-04)

Ms. Tracy Hughes, Hearing Officer, made a brief presentation to the Commission in regards to her recommended decision in the matter of the petition of the Department of Game and Fish for approval of the use of a piscicide in Animas Creek, Gila National Forest and Ladder Ranch, Sierra County, New Mexico. Ms Hughes stated that the Commission must either grant the petition in whole or part or deny the petition. Ms. Hughes recommended that the Commission grant the petition.

After discussion between the Commission, Ms. Tracy Hughes, Peter Wilkinson, Dr. Ann McCamble, and Frank Weisbarth the following changes were recommended:

- Commissioner Olson recommended on page 7, item 23 – strike the word “all”.
- Commissioner Olson recommended on page 11, item 43 should read - From a human health risk perspective, there is no concern for human health risk from antimycin, acetone, diethyl phthalate or manganese at the proposed application concentrations.
- Commissioner Olson recommended on page 14, item 59 – strike the end of the sentence after the word antimycin A.

- Commissioner Olson recommended on page 14 under the recommendations strike item 1 and include portions of item 1 into item 2 which then should read – Game & Fish shall conduct a survey of all private water systems within 10 miles of the terminus of the project and provide reasonable notice to the downstream users prior to deployment. Commission Olson requested that this language be reflected in the order as well.

ACTION: **Commissioner Olson made a motion to adopt the Hearing Officers recommended decision as amended. Commissioner Johnson seconded. Commissioner Easterling made a friendly amendment to page 16, item 11, to read “Game & Fish shall provide the WQCC a general overview report within 90 days after the completion.” Commissioner Olson and Commissioner Johnson both accepted the friendly amendment. Motion carried with one no vote by Commissioner Hutchinson.**

Commissioner Johnson recommended the following changes to the Order:

- Page 2 item 3 - Strike the first line.
- Page 2, item 6 – Strike first line “make all necessary arrangements to” and then should read “the Department shall have” and go on from there.
- Page 3 item 11 – should read “The Department shall provide an interim report to the WQCC with 90 days after the completion of the project

Commissioner Olson recommended the following changes to the Order:

- Strike item 1 and include portions of item 1 into item 2 which then should read – Game & Fish shall conduct a survey of all private water systems within 10 miles of the terminus of the project and provide reasonable notice to the downstream users prior to deployment. Commission Olson requested that this language be reflected in the order as well.

Commissioner Glass would like to append to the phrase on condition 10 “30 days prior to initiation of the project”.

Commissioner Glass revised his statement of condition 10: remove the term 30 days and replace it with it with “prior to the initiation of the project and add the words “approved documents” after the word final.

Commissioner Glass recommended condition 8 read “The Department of Game & Fish shall, at the request of downstream users, test drinking water samples collectively from wells within 200 ft. of the stream bed and within 10 miles downstream of the project terminus for acetone diathathaly and nonoxynol 9 given an analytical test is available.

ACTION: **Commissioner Johnson made a motion to approve the Order as amended. Commissioner Easterling seconded. A roll call was conducted and the results are as follows:**

Commissioner Easterling	Yes
Commissioner Murray	Yes
Commissioner Brandvold	No
Commissioner Olson	Yes
Commissioner Johnson	Yes
Commissioner D'Antonio	Yes
Commissioner Maitland	Yes
Commissioner Glass	Yes
Commissioner Hutchinson	No
Commissioner Keyes	Abstain
Commissioner Lee	No
Commissioner Sloane	Yes

Motion carries with a vote of 8 yes's, 3 no's, and 1 abstention.

Item #10: Formal approval and adoption into the State's Water Quality Management Plan of the TMDLs for the Jemez River Watershed.

Mr. David Hogge presented to the Commission the following:

- 23 TMDLs being proposed for approval and adoption.
- Federal public participation requirements for formal approval.
- Adoption and Incorporation into the State Water Quality Management Plan.
- Public participation process and comment period.
- Scheduled Public Meetings for August 28th & 29th. Due to fires in the area the meetings were postponed to September 24th & 25th. On the 24th there was no attendance from the public and at the 25th meeting there were 6 attendees but no public comments submitted for these TMDLs.
- TOC criteria have been dropped from the high water since they have been initiated.

At this time Commissioner Johnson took over as Chair of the Commission.

Commissioner Keyes requested that dates be put on all photographs.

After discussion between Commissioners and Mr. Hogge the following action was taken:

ACTION: Commissioner Glass made a motion to approve and adopt the TMDLs for the Jemez River Watershed into the Water Quality Management Plan with the exception of total organic carbon. Commissioner Hutchinson seconded. Motion carried unanimously.

At this time Commissioner Johnson handed the Chair position to Commissioner D'Antonio.

Item #11: Continuation of October 1, 2002 hearing and possible decision in the matter of Proposed Revisions to Statewide Water Quality Management Plan (WQMP). (WQCC 02-01)

Chair D'Antonio announced that he would be serving as hearing officer and the time is now 1:14pm and we are in Mabry Hall at the Department of Education on December 16, 2002. The Commission is here to consider the adoption of the Water Quality Management Plan.

Chair D'Antonio announced we would now resume the hearing.

ACTION: Commissioner Sloane made a motion to adopt the Water Quality Management Plan as a whole and add work element 11 as a placeholder. Commissioner Keyes seconded.

Commissioner Brandvold offered a friendly amendment to change:

Line 9 - strike 2 replace with 3

Line 10 after minutes – insert the word each

Line 12 – 2 remains

Line 16 – strike 2 replace with 3

Line 17 after minutes - insert the word each

Line 19 – 2 remains

Commissioner Glass offered a friendly amendment that work element 10 specify a minimum of 3 samples be taken 15 minutes apart.

Commissioner Johnson made a friendly amendment to adopt everything except the Introduction and when we get to the next agenda item, instruct the Department to start the public comment period on the Introduction and Work Element 11.

Commissioner Sloane and Commissioner Keyes accepted the friendly amendments.

After lengthy discussion the motion carried with 1 abstention by Commissioner Murray.

Item #12: Start of a 30-day public comment period on a draft Water Quality Management Plan Work Element 11 regarding public participation in Clean Water Act Programs.

Mr. Jim Davis and Ms. Stephanie Stringer requested approval by the Commission to start the 30-day public comment period on a draft WQMP Work Element 11.

Ms. Arends of CCNS requested a 45-day public comment period to have more time to prepare.

ACTION: **Commissioner Olson made a motion to start the 30-day public comment period on January 1st which will allow the Department time to develop and interchange language that they may need for the revisions to the Introduction and include Work Element 11. Commissioner Johnson seconded.**

Commissioner Johnson offered a friendly amendment to clarify the motion to say that the documents we are working with, the Introduction will be from the October 1, 2002 version of the Water Quality Management Plan Introduction. Work Element 11 will be based on the submittal this morning dated 12/16/2002. Commissioner Olson accepted the amendment.

After discussion and questions by the Commission the following action was taken:

Commissioner Olson withdrew his motion. Commission Johnson withdrew his second.

Commissioner Keyes made a motion to accept the recommendation for the 30-day public comment period on the draft Water Quality Management Work Plan Work Element 11 and that the 30-day comment period start today. Commissioner Easterling seconded.

After further discussion between Department of Environment Staff and Commissioners the following action was taken:

Commissioner Keyes withdrew his motion. Commissioner Easterling withdrew his second.

Commissioner Keyes made a motion to table agenda item 12 until the January meeting. Commissioner Brandvold seconded. Motion carried unanimously.

Commissioner Keyes made a motion to instruct the Department to bring forth the revised Introduction for the January meeting. Commissioner Maitland seconded. Motion carried unanimously.

Item #13: 2002-2004 New Mexico §303(d) Impaired Waters List – Request for WQCC Review.

Mr. Lou Rose, Counsel for LANL, requested the Commission withdraw the §303(d) List that was submitted, review the list and make changes as appropriate and resubmit to EPA in accordance with Section 303d of the Federal Clean Water Act.

Ms. Tannis Fox, Counsel for the Department, stated that the WQCC has the right to delegate authority and has delegated authority to the Department for development and submission to EPA of the §303(d) List. This already has been done and the Department is waiting for approval from EPA.

After questions from the Commission to Counsel the following actions were taken:

ACTION: **Commissioner Sloane made a motion to deny the review of LANL's request base on the rational that there has been a delegation to the Environment Department. Commissioner Maitland Seconded.**

At this time discussion between Commissioners began and the following action was taken:

ACTION: **Commissioner Keyes made a motion to table Commissioner Sloane's motion. Commissioner Hutchinson seconded. A roll call vote was taken and the results are as follows:**

Commissioner Easterling	No
Commissioner Murray	Yes
Commissioner Brandvold	No
Commissioner Olson	No
Commissioner Johnson	Yes
Commissioner Maitland	No
Commissioner Glass	No
Commissioner Hutchinson	Yes
Commissioner Keyes	Yes
Commissioner Lee	Yes
Commissioner Sloane	No
Commissioner D'Antonio	No

Motion fails with a vote of 7 no votes and 5 yes votes.

Due to the motion failing the Commission reverted to Commissioner Sloane's motion to deny the review of LANL's request base on the rational that authority has been a delegation to the Environment Department. Which was seconded by Commissioner Maitland. A roll call was taken and the results are as follows:

Commissioner Easterling	Yes
Commissioner Murray	Yes
Commissioner Brandvold	Yes
Commissioner Olson	Yes
Commissioner Johnson	Yes
Commissioner Maitland	Yes
Commissioner Glass	Yes
Commissioner Hutchinson	No
Commissioner Keyes	No
Commissioner Lee	Abstain
Commissioner Sloane	Yes
Commissioner D'Antonio	Yes

Motion carries with a vote of 9 yes votes, 2 no votes and 1 abstention.

Item #14: Other Business

No other business was discussed.

December 17, 2002

Geraldine Madrid-Chavez, WQCC Administrator, took roll and noted a quorum was present.

ACTION: Commissioner Johnson made a motion to appoint Commissioner Olson as Hearing Officer. Commissioner Hutchinson seconded. Motion carried unanimously.

Commissioner Olson announced that he will be serving as hearing officer and the time is now 11:13am and we are in Mabry Hall at the Department of Education in Santa Fe, New Mexico on December 17, 2002. This hearing regards the Phelps Dodge, Tyrone, Incorporate, Chino mines Company, and Cobre Mining Company which involves: WQCC 02-13(A) & WQCC 02-14(A), WQCC 02-12(A).

The hearing was begun and a court reporter was present for this hearing, therefore this hearing was not taped.

ACTION: Commissioner Keyes made a motion to bring Items 6, 7, and 8 back to the table. Commissioner Hutchinson seconded. Motion carried unanimously.

Item #6: Request for hearing in the matter of the Petition for a hearing on the Secretary's determination dated October 29, 2002 – Cobre Mining Company, Petitioner. (WQCC 02-20A)

Item #7: Request for hearing in the matter of the Petition for a hearing on the Secretary's determination dated October 29, 2002 – Chino Mines Company, Petitioner. (WQCC 02-21A)

Item #8: Request for hearing in the matter of the Petition for a hearing on the Secretary's determination dated October 29, 2002 – Phelps Dodge Tyrone, Inc., Petitioner. (WQCC 02-22A)

After discussion between the parties the following action was taken:

ACTION: Commissioner Johnson made a motion that the Commission vacates petitions WQCC 02-12(A), WQCC 02-13(A), WQCC 02-14(A), WQCC 02-20(A), WQCC 02-21(A) and WQCC 02-22(A) based on mootness and concludes that the August 30, 2002 and October 29, 2002 NMED letters are not appealable actions in accordance with 20.6.2.3112NMAC. Vacating these petitions is dependent on the following:

- (a) NMED withdraws the letters of August 30, 2002 and October 29, 2002 issued by the Secretary.
- (b) This order does not affect any other previous, current or future proceedings.
- (c) This action does not limit the legal rights of any other parties.
- (d) Between August 29, 2002, and the date of this order, the Department agrees that no document created and filed in WQCC #'s 02-12(A), 02-13(A) & 02-14(A) between August 29, 2002 and the date of this Order gave notice to Petitioners of a written determination that the Chino, Tyrone and Continental Mines pose a hazard to public health under the Water Quality Act, NMSA 1978, Section 74-6-1 to -15, and the Commission Regulations, and Petitioners received no such notice between such dates.

Commissioner Sloane seconded. Motion carried unanimously.

Hearing Officer Olson announced the hearing is concluded at 3:22pm.

Item #15: Next Meeting

The next WQCC meeting will be on January 14-15, 2003 at the Department of Education Building in Mabry Hall.

ACTION: Commissioner Maitland made a motion to adjourn. Commissioner D'Antonio seconded. Motion carried unanimously.

WQCC Chairman